

REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks.

Claim 12 has been amended. Claims 19-20 have been added. Claims 1-20 are currently pending.

The outstanding FOA, which was mailed on July 14, 2004, initially was not received. This problem was identified, and a call to Examiner Wasylchak was made to request another copy of the FOA. The examiner responded by faxing the FOA on November 12, 2004. Subsequently, a Petition to Reset Period for Reply under MPEP 710.06 was filed on November 24, 2004. The Examiner responded by telephone and indicated in an e-mail communication dated January 13, 2005 that the Period for Reply has been reset to show the FOA mailing date as November 12, 2004, the day the FOA was faxed.

In the outstanding FOA, the PTO rejected original claims 1-18 under 35 USC 102(b) as being unpatentable over Schreckengast et al. (U.S. Published App. 2002/0128943). The claim rejection is traversed for at least the following reasons.

Rejection of claims 1-18 under 35 USC 102(b) by the '943 published application

Under 35 USC 102(b) and 102(e),

“a person shall be entitled to a patent unless –

...
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States

...
(e) the invention was described in—

(1) an application for patent, published under section 122 (b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351 (a) shall have the effect under this subsection of a national application published under section 122 (b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language..."

The present application was filed on October 27, 2000, with a priority date of October 27, 1999. The '943 published application was published on September 12, 2002, i.e., almost three years *after* the priority date of the present application. Thus, the '943 published application cannot be considered as prior art under 35 USC 102(b) against the present application. Furthermore, the '943 published application has a filing date of February 19, 2002, i.e., more than two *after* the filing date of the present application. Thus, the '943 published application cannot be considered as prior art under 35 USC 102(e) either.

It is noted that the '943 published application is a continuation-in-part of USP No. 6/879,973, filed January 11, 2001, which is a continuation-in-part of USP No. 6,535,865, filed July 14, 1999. Only the '865 parent patent has an effective filing date for consideration as prior art under 35 USC 102(e). However, at least some of the Examiner's citations in the '943 published application do not appear to be disclosed in the '865 parent patent. Therefore, it is respectfully submitted that the '865 parent patent cannot be considered as prior art against the claimed invention.

Claims 19 and 20 have been added to further clarify the claimed invention. Support for the claimed features can be found in the disclosure of the originally-filed application. No new matter has been added.

Conclusion

For at least all of the above reasons, it is respectfully submitted that the present invention is neither disclosed nor suggested by the references of record, and the claims now pending patentably distinguish the present invention from the references of record. Accordingly, reconsideration and withdrawal of the outstanding rejections and an issuance of a Notice of Allowance are earnestly solicited upon the filing of a continuation.

Respectfully submitted,

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